



c. Petitioner was selected for recruiting duty based on an outstanding record. His detaching fitness report was below average yet he was advised by the reporting senior and the non-commissioned officer in charge of the recruiting station that the report was not adverse. Consequently, he was never given the opportunity to respond or appeal the adverse fitness report.

d. If a response to the adverse fitness report had been on file when the promotion board first reviewed his records for consideration for promotion to gunnery sergeant in CY 2000 his comments and the fitness report would have been reviewed at the same time, enclosure (2). It could possibly have made a difference to the selection board and the Petitioner may have been selected for gunnery sergeant in CY 2000.

e. After the selection board adjourned the Petitioner and his recruiting station sergeant major reviewed the Petitioner's personnel record to see if a reason could be found as to why the Petitioner was not selected for promotion to gunnery sergeant. They determined that the fitness report for the period 1 October 1997 to 25 February 1998 was the reason he had failed selection.

f. On 16 April 2001 Petitioner requested the fitness report be removed from his records. The report was removed via letter dated 7 August 2001, enclosure (3).

g. The CY 2001 Gunnery Sergeant Selection Board convened on 24 April 2001, prior to the date that the Performance Evaluation Review Board reviewed and approved the request to remove the report from Petitioner's records. Notwithstanding the adverse report Petitioner was selected for promotion to gunnery sergeant.

h. Petitioner then requested remedial consideration for promotion based on the report being removed from his record and was advised by CMC, MMPR-2, that remedial consideration for promotion was denied because he could not receive remedial consideration for a rank currently held or was selected to, enclosure (4).

i. In correspondence attached as enclosure (5), the office having cognizance over the subject matter involved in Petitioner's application recommended denial, commenting that because the adverse fitness report did not stop him from being selected to gunnery sergeant, the effective date of the promotion should not be backdated.

**CONCLUSION:**

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (5), the Board finds the existence of an injustice warranting the requested relief. The Board concluded that since competition is extremely keen for promotion to gunnery sergeant that the adverse report contained in the record could have kept the Petitioner from being selected for promotion to gunnery sergeant in CY 2000. When Petitioner was considered for gunnery sergeant during CY 2000 he had received only two fitness reports which were on file following the adverse report in his records. During CY 2001 Petitioner received two additional reports which then gave the selection Board a total of 4 reports following the adverse report and the selection Board had twice as much data to review. The Board determined that since the gunnery sergeant selection board had the additional reports to review they had a broader picture to look at to select Petitioner for gunnery sergeant. The Board also concluded that if the adverse report had not been in the record that the Petitioner would have been selected for gunnery sergeant during the CY 2000 selection process.

Accordingly, the Board recommends the following corrective action.

**RECOMMENDATION:**

That Petitioner's naval record be corrected, where appropriate, to show that

a. Petitioner was promoted to paygrade E-7 effective 1 February 2001.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Boards proceedings in the above-entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
G. L. ADAMS  
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved: 11-10



Joseph G. Lynch  
Assistant General Counsel  
(Manpower and Reserve Affairs)